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DECISION



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for. m. 2-11
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-196694

DATE: December 12, 1979

MATTER OF: Captain Edmond Janczyk, USCG (Retired)

- DIGEST:
1. A Coast Guard member's dependents remained in Hawaii when the member was transferred on permanent change of station orders to Cleveland, Ohio. The member is not entitled to continued payment of station allowances under 37 U.S.C. 405 (1976) in the absence of an emergency preventing dependents from leaving the overseas station since the dependents' residence in the overseas area has no connection with the member's duty assignment.
 2. The unsettled conditions in the public school system at a member's new duty station, or the member's belief that the public schools at the new duty station are inadequate, does not present a condition beyond the control of the member or dependents preventing them from departing the old overseas station for purposes of continuing station allowances when the member elects to have the dependents remain at the old station.
 3. A member upon a permanent change of station from Hawaii to Cleveland, Ohio, could have shipped his household goods and privately owned automobile at Government expense but chose to leave them in Hawaii with his dependents and claims overseas station allowances instead. The fact that a member may forego receiving transportation entitlements he was entitled to does not create an entitlement to another allowance to which he has no legal entitlement.

This is an appeal from a settlement of our Claims Division which disallowed a Coast Guard member's claim for overseas station allowances when the member left his dependents at his old overseas duty station, where such allowances were payable, after he was transferred to a duty station in the continental United States

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where they are not payable. The member argues that he should have been authorized to continue to receive the station allowances because he left his dependents at the old station due to unsettled conditions in the public schools at his new duty station. We sustain the disallowance of the claim.

Captain Edmond Janczyk who was on active duty with the Coast Guard was stationed in Hawaii. His wife and children resided with him in non-Government housing and received housing (HOLA) and cost-of-living (COLA) allowances. Effective August 15, 1977, Captain Janczyk was ordered on permanent change of station (PCS) to Cleveland, Ohio. His wife and children remained in Hawaii during the 1977-1978 school year and sometime thereafter Captain Janczyk rejoined his family in Hawaii upon his retirement. He has presented a claim for station allowances, HOLA and COLA retroactive to August 15, 1977, the date of his departure from Hawaii. As justification for his family remaining in Hawaii rather than joining him at his new duty station in Cleveland, Ohio, Captain Janczyk has cited the unstable school situation in Cleveland during the 1977-1978 school year. It is his contention that his decision to leave the dependents in Hawaii was not based on personal convenience but on what was best for the education, development and growth of his children and that the unsettled school condition in the Cleveland public schools was beyond his or his dependents' control preventing them from departing Hawaii. In addition, Captain Janczyk has cited the considerable savings to the Government since he did not ship his automobile or household furnishings from Hawaii to Cleveland.

Overseas station allowances are payable pursuant to 37 U.S.C. 405 (1976), under which the Secretaries concerned may authorize the payment of HOLA and COLA considering all elements of the cost of living to members of the uniformed services and their dependents when the member "is on duty" outside the United States or in Hawaii or Alaska.

Implementing regulations for 37 U.S.C. 405 are contained in chapter 4, Part G of Volume 1, Joint Travel Regulations (1 JTR). In line with the purpose of 37 U.S.C. 405, paragraph M4301-1, 1 JTR, provides that HOLA and COLA are authorized for the purpose of defraying the average excess costs experienced by members "on permanent duty" at places outside the United States.

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We have uniformly held that no authority exists for payment of overseas HOLA and COLA on account of dependents if the dependents' residence outside the United States or in Hawaii or Alaska has no connection with the member's duty assignment. 38 Comp. Gen. 531 (1959) and 49 Comp. Gen. 548 (1970).

Since after August 15, 1977, the dependents in this case were not residing outside the United States in a military dependent status but because they elected to remain there for personal reasons not connected with the member's military duties, any increase in living costs incurred by them do not come within the contemplation of 37 U.S.C. 405. 49 Comp. Gen. 548, supra; 53 Comp. Gen. 339 (1973).

Paragraph M4301-3b, 1 JTR, provides for continuance of HOLA and COLA for up to 60 days after entitlement ordinarily ceases in certain circumstances when dependents remain in the overseas area after the departure of the member. Paragraph M4301-3b provides in part as follows:

"* * * the continuance of housing and cost-of-living allowances at the old station is intended only when delayed departure of dependents is necessary for reasons beyond the control of the member or his dependents (such as illness or hospitalization of one or more dependents, completion of school term, lack of acceptable quarters at the new station, difficulties related to the securing of transportation for dependents or shipment of household goods to the new station, exigencies of the Service, etc.) * * *."

Also, paragraph M4301-3c provides that the Secretary concerned, or his designee, may authorize entitlement beyond 60 days in accordance with service procedures. Captain Janczyk's requests for such extensions were not approved by the Coast Guard.

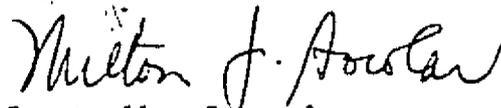
It is our view that these provisions were intended to cover unusual or emergency situations where departure of the dependents is delayed. None of the specific contingencies listed in the regulations existed in this case. Instead it appears that the member elected not to move his family to Cleveland because of unsettled conditions in the public school system. While his desire for

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quality education for his children is understandable, it does not qualify under the regulations as a condition which would prevent the dependents in this case from departing an overseas station for purposes of continuing station allowances. Thus, the place where the member chose to have his children educated was a personal choice. It did not prevent them from leaving Hawaii and their continued presence in Hawaii had no connection with his military duties.

The fact that the member did not choose to receive the benefits of the transportation allowances for his family from Hawaii to Cleveland, to which he was legally entitled, does not entitle him to another allowance (HOLA and COLA) to which he was not entitled.

Accordingly, the Claims Division's disallowance of Captain Janczyk's claim is sustained.



For The Comptroller General
of the United States